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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,340	08/02/2006	Tadahiro Ohmi	039262-0153	2005
22428	7590	07/22/2009	EXAMINER	
FOLEY AND LARDNER LLP			CHEN, KEATH T	
SUITE 500				
3000 K STREET NW			ART UNIT	PAPER NUMBER
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			07/22/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### **DETAILED ACTION**

1. Applicants' submission of claim and notice of appeal, filed on 07/13/2009, responding to the rejection of claims 9-14, 18, and 33-35 without amendment is acknowledged. The argument is addressed below.

#### ***Response to Arguments***

Applicants' arguments filed 07/13/2009 have been fully considered but they are not persuasive.

2. In regarding to 35 USC 103(a) rejection of claim 9 based on Herchen '434, Applicants acknowledged that '434 teaches the larger apertures 28 formed at circumferential portion 24, see the second last paragraph of page 5 but argue that if '434 is modified by arranging apertures each increasing in diameter as going outwards of the shower plate, the device would have failed to provide an even etch rate, see the last paragraph of page 5.

This argument is found not persuasive.

It is not clear on what basis Applicants assert that modification of '434 would have failed. Fig. 3 of '434 showed an abrupt change of aperture diameter. It would have been obvious to a person of ordinary skill in the art to gradually change the aperture diameter from center to edge and having a high probability of success, if not definite success. (Note the thickness of the gas distribution plate can also be made to gradually increasing.)

Furthermore, '434 clearly teaches the motivation of gradual change. "The flow of process gas through a GDP ... tends to be faster in the center region ... than at the circumference ... It is well known in the prior art to adjust the size ... of the holes in the

GDP to compensate for the irregular distribution of the process gas", (col. 2, lines 34-42), a person of ordinary skill in the art would have known the distribution of the process gas is a gradual change, not an abrupt change.

3. Applicants further argue that "the uniformity advantages is expected from the prior arts as discussed above" that the prior arts did not teaches or achieves the uniformity level as shown in Figs. 6 and 9 of the instant Application, see the second complete paragraph of page 6.

This argument is found not persuasive.

'434 clearly teach uniformity advantages over the same diameter apertures GDP, see col. 2, lines 33-34 and col. 4, lines 40-44, for example.

While the degree of uniformity is not part of the claim, Applicants did not specifically pointed out what structure feature in the claim language distinguish instant Application against '434's GDP as set forth above.

When the structure recited in the reference is substantially identical to that of the claims, claimed properties or functions are presumed to be inherent (*In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977); MPEP 2112.01).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEATH T. CHEN whose telephone number is (571)270-1870. The examiner can normally be reached on 6:30AM-3 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cleveland can be reached on 571-272-1418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. T. C./  
Examiner, Art Unit 1792

/Michael Cleveland/  
Supervisory Patent Examiner, Art Unit 1792